

STATE OF MICHIGAN  
COURT OF APPEALS

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In re PAROLE OF JOSEPH ADAMS.

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JOSEPH ADAMS,

Appellant,

v

PAROLE BOARD,

Appellee.

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UNPUBLISHED

October 19, 2004

No. 246768

Kent Circuit Court

LC No. 03-000111-AAA

Before: Neff, P.J., and Smolenski and Schuette, JJ.

PER CURIAM.

On November 21, 2002, the Michigan Parole Board denied petitioner parole. Petitioner sought leave to appeal in Kent Circuit Court. The circuit court denied leave, indicating that it did not have jurisdiction over such an appeal. Petitioner moved for reconsideration, offering statutory as well as constitutional considerations why the court could hear the appeal. The court granted reconsideration and affirmed its earlier ruling. This Court granted leave to appeal. We affirm.

I. INMATE’S RIGHT TO APPEAL DECISION OF PAROLE BOARD

Though petitioner acknowledges that the 1999 amendments to the Department of Corrections act, MCL 791.201 *et seq.*, eliminate an inmate’s right to appeal a Parole Board decision by limiting such appeals to prosecutors and victims,<sup>1</sup> petitioner argues the right to appeal remains under the provisions of the Revised Judicature Act (RJA), MCL 600.101 *et seq.*, allowing generally for appeals to the circuit court from decisions of administrative agencies or officers, MCL 600.631, under which his complaint was filed. We disagree.

“Parole eligibility is governed by statute and the interpretation and application of statutes is reviewed de novo.” *Jackson v Dep’t of Corrections*, 247 Mich App 380, 381; 636 NW2d 305 (2001). This Court recently addressed the issue presented by petitioner in *Morales v Parole Bd*,

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<sup>1</sup> MCL 791.234 as amended by 1999 PA 191.

260 Mich App 29; 676 NW2d 221, lv den 470 Mich 885 (2003). Therein, the Court clearly held that parole decisions are not reviewable by the courts under the Department of Corrections act, Administrative Procedures Act (APA), MCL 24.201 *et seq.*, or the RJA. *Id.*, 34-40.

Our court rules mandate that we must follow the rule of law established by a prior published decision of this Court issued after November 1, 1990. MCR 7.215(J)(1); *Wiley v Henry Ford Cottage Hosp*, 257 Mich App 488, 509; 668 NW2d 402 (2003).<sup>2</sup>

## II. EQUAL PROTECTION

Petitioner next argues that MCL 791.234 violates his right to equal protection of the law in that it grants certain rights to one class [prosecutors and victims] while denying the same to another [inmates]. We disagree.

Again, this issue was fully explored by the Court in *Morales, supra*. After determining that there was no suspect class or fundamental right involved, the Court found that such a distinction was rationally related to the legitimate governmental interest of public safety and conserving governmental resources. *Morales, supra*, 50-52. The holding of *Morales* has not been overruled by a higher authority, and we are bound to follow it. *Wiley, supra*.

## III. DUE PROCESS

Finally, petitioner argues that depriving him of an appeal of the Parole Board decision violates his right to due process under the Michigan and United States Constitutions. We disagree.

The federal and Michigan Constitutions guarantee that persons may not be deprived of life, liberty, or property without due process of law. US Const, Am XIV; Const 1963, art 1, § 17. Normally, Michigan's due process clause is construed no more broadly than the federal guarantee. *Syntex Laboratories v Dep't of Treasury*, 233 Mich App 286, 290; 590 NW2d 612 (1998). Procedural due process limits actions by the government and requires it to institute safeguards in proceedings that affect those rights protected by due process. *Hanlon v Civil Service Comm*, 253 Mich App 710, 722-723; 660 NW2d 74 (2002). Whether the due process guarantee is applicable depends initially on the presence of a protected "property" or "liberty" interest. *Id.* at 723. If the petitioner possesses such an interest, only then must the court determine what process is due. *Williams v Hofley Mfg Co*, 430 Mich 603, 610-611; 424 NW2d 278 (1988).

In *Glover v Parole Bd*, 460 Mich 511; 596 NW2d 598 (1999), our Supreme Court, relying on the United States Supreme Court case of *Greenholtz v Inmates of Nebraska Penal & Correctional Complex*, 442 US 1; 99 S Ct 2100; 60 L Ed 2d 668 (1979), held that a prisoner has no liberty or property interest in parole protectable by the due process clause if under the

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<sup>2</sup> We add that *Morales* considered and rejected the primary arguments petitioner raises here.

particular state statute, there is no presumption or expectancy of parole. As the United States Supreme Court reasoned:

That the state holds out the possibility of parole provides no more than a mere hope that the benefit will be obtained. To that extent, the general interest asserted here is no more substantial than an inmate's hope that he will not be transferred to another prison, a hope which is not protected by due process. [*Id.*, 11.]

Likewise, our Supreme Court in *Glover* held, consistent with *Greenholtz, supra*, that a prisoner in Michigan has no vested right, protected by the Due Process Clause, in parole. *Glover, supra*, 521-522. See also *Sweeton v Brown*, 27 F3d 1162, 1164-1165 (CA 6, 1994) (finding that Michigan's parole scheme, particularly MCL 791.231, provides broad enough discretion to the Parole Board so that no liberty or property interest vested with the prisoner). Accordingly, because there is no property or liberty interest here, the due process protections do not apply. *Williams, supra*, 610-611.

Affirmed.

/s/ Janet T. Neff  
/s/ Michael R. Smolenski  
/s/ Bill Schuette